United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1921

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B P/S

STANLEY V. TUCKER,
Plaintiff-Appellant

T-3642

-vs-

No 74- 1921

JEAN NEAL, ROBERT R. ANDERSON,
and ANDERSON & ANDERSON, etc.
Defendants -Appellees

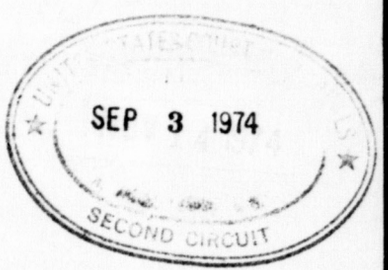
.....

APPELLANT's BRIEF

.....

Appeal From Final Judgment Entered on Cross-Motions For Summary Judgment on May 29th, 1974 (Ruling dated March 5th, 1974) and

Appeal From Final Order or Judgment Made June 11, 1974 Denying Motion For New Trial and Motion To vacate Judgment



.....

HONORABLE T. EMMET CLARIE
TRIAL JUDGE

STANLEY V. TUCKER
APPELLANT/PLAINTIFF
Box 35
Hartford, Conn 06101

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STATE CITATIONS

ISSUES PRESENTED FOR REVIEW

1. Is the California District Court Judgment against which this action is directed void due to service not being made by the federal marshall as required by FRCP Rule 4 c?

2. Can litigation in a forum state with other persons be an "activity" basis for personal jurisdiction years later under constitutional limitations on "long arm" statutes?

3. Does the factual record in this action fail to support the District Court's judgment?

4. Where a state adopts a long arm statute permitting jurisdiction over non-residents does the statute of limitations then protect both residents and non-residents equally?

5. Did the District Court err in denying Appellant's Motion to Amend his Complaint to Challenge the constitutionality of Conn G. S. 49-44 permitting unlimited recording of purported "judgment liens" without notice or hearing ?

6. Did the District Court err in Denying Appellant's Motion For Discharge of Excessive Liens?

7. Is the Appellee's Affidavit Supporting Summary Judgment Inadequate being comprised of hearsay and speculation?

8. Does extrinsic fraud preclude application of res judicata to the Calif federal judgment to issues not litigated?

9. Does denial of Appellant's right to full and fair hearing in Calif federal court preclude application of res judicata?

STATEMENT OF THE CASE

A. Nature of The Case - Jean Neal's 14 Invalid Liens.

Appellee, Jean Neal, former sister-in-law to Appellant filed purported judgment liens against 14 separate properties in Conn. with ownership interest by Appellant starting about Sept 1972 and completed about May 1973. Appellant contends the liens to be malicious, excessive and invalid and one lien on one property alone would be sufficient security for alleged debt.

The liens have had catastrophic affect on Apppelant by denying to Appellant the right to re-finace or sell any of his property in the ordinary course of business due to cloud over his title by reason of the liens. Interest rates have soared from about 7% to about 11% with no commercial mortgage moneys presently available.

Vacant land owned by Apppellant due to cloud caused by the liens could not be built on for going on two years. Intense inflation has sky-rocketed construction costs and in 1974 has brought almost all private residential construction in Conn. to a halt.

This action was brought to declare the liens invalid, to clear title to the land under the civil rights act and also 28 USC 1665.

B. The Complaint.

On April 10, 1973 Apppellant filed this action in the District Court of Connecticut at Hartford seeking declaratory relief that

the judgment liens were invalid and injunctive relief as to the release of the liens. Jurisdiction was vested and unquestioned by Appellees under 42 USC 1983, 1985 and 28 USC 1331, 1332, 1343 and also 28 USC 1665.

C. Amendment to Complaint.

On Sept 10, 1973 Appellant filed a motion for leave of the Court to grant Amendment to the Complaint (FRCP 15 a) by adding a second cause of action challenging the constitutional validity of the California district Court order upon which the judgment liens were based as being without jurisdiction and without due process.

The motion requested leave of the court to add a third cause of action challenging the constitutionality under the Civil Rights act of Connecticut G. S. 49-44, the statute permitting unlimited recording of judgment liens without requiring ever any notice or hearing. Declaratory and injunctive relief and a three-judge district court was requested.

D. Approval by Court of Second Cause and Denial of Third

On October 2, 1973 Judge Clarie grantedleave to file the second cause and denied leave to file the third because.....

> "... the latter allegations fail to state a claim upon which relief can be granted"

E. Interlocutory Appeal as to Denial of Third Cause of Action

As part of his appeal from the final judgments rendered herein Appellant also appeals the denial of approval for the third cause of action as being contrary to leading cases.....

Lynch v Household Finance	405 U. S. 538
Fuentes v Shevlin	92 S. Ct 1983
Tucker v Maher	405 U. S. 1052

F. Motion To Discharge Excessive Liens

On January 7, 1974 Appellant moved in the District Court for an order discharging such of the liens as were excessive based on FRCP 69 a and Conn G. S. 49-50. The Court on March 8th, 1974 denied the motion.

G. Interlocutory Appeal as to Denial of Motion To Discharge Excessive Liens.

The interlocutory decree of March 8th, 1973 is being appealed as part of this appeal from final judgments.

H. Cross-Motions For Summary Judgment

Both parties filed motions for Summary Judgment and on March 5th, 1974 the District Court issued the Ruling that granted Judgment for Appellee and denied Judgment for the Appellant; this order entered as judgment May 29th, 1974. The major thrust of this appeal is directed at this judgment.

I. Appellant's Motion For New Trial and Rule 60 b Motion

Appellant filed timely two companion motions under Rules 60 b and 59a at which the major points taken up were that the district court in California lacked personal jurisdiction by reason service was not made by the U. S. Marshall (FRCP Rule 4c)(see also Veek v Commodity Enterprises 487 F 2d 423) and at factual errors in the Ruling and the extrinsic fraud used by Appellee in failing to disclose her long arm jurisdictional basis in the California Northern District Court proceedings. Both Motions were denied June 11, 1974 and the denial part of this appeal.

J. Preliminary Application For Relief in the 2nd C. A. Under T-3642

On or about the 25th of June 1974 Appellant filed in the 2nd C. A. an Application For Order For Supplemental Relief as to discharge of one of the allegedly invalid liens and on July 31st, 1974 was denied by a panel of Circuit Judges consisting of Wilfred Feinberg, William H. Mulligan and James L. Oakes.

STATEMENT OF FACTS

Appellant is resident of Connecticut, since 1961, and Appellee is the sister of the former wife of Appellant, both sisters residing in California. Divorce proceedings started in 1959 in California and vindicative and malicious acts took place persistently over the years by Appellee and her relatives such as concealment of minor children of Appellant in other cities or counties of California when Appellant exercised his vacation and/or visitation rights.

Approx 40 litigations of all types both civil and criminal were brought against Appellant in the California courts over the decade from about 1959 to about 1969 by Appellee, her relatives and/ or attorneys. All of these actions were dismissed in the trial courts except two or three such as this action where judgment was rendered without jurisdiction under conditions of denial of due process.

Appellant's sole activity randomely conducted in California was the first amendment right to travel on vacation, to visit his children and to seek tovindicate their rights in court.

The claims of Jean Neal come from a judgment made in the state Superior Court of Ventura on April 23, 1959. Appellant claims the state judgment as invalid due to denials of due process and trial judge disqualified under statute CCP 170.6.

Over two years later on July 30th, 1971 Appellee filed an action to establish her state claim in the federal courts of Northern California rather than in the federal courts of Connecticut as she should have.

Service of summons and complaint was made under the California long arm statute (CCP 410.10) under the provision for service by air mail requiring return receipt (CCP 415.40) At this point Apppellant contends that Appellee comitted a FATAL ERROR in that service was made by a person specified by CCP 414.10 (a person over 18 years not party to action) whereas the federal rule FRCP 4c mandates that service by made by the Federal Marshall.

Appellant claims the complaint filed in the federal court of california was fraudulent to the extent that the Jurisdictional basis was omitted but filed with the court in an ex parte affidavit that Appellant did not receive for two years until the record on appeal from the 9th C. A. was received in mails. Thus by fraud Appellant contends he was denied the notice and meaningful hearing and judgment rendered against him in the district court of northern California.

ARGUMENT

I. THE CALIFORNIA JUDGMENT WAS VOID BEING WITHOUT JURISDICTION DUE TO DEFECTIVE SERVICE OF PROCESS FRCP RULE 4c

FRCP RULE 4c: "Service of all process shall be made by a U. S. Marshall or some person specially appointed by the court for that purpose "

The recent 9th C. A. case of Veek v Commodity Enterprises, 487 F 2d 423, Nov 6th, 1973, unequivacably settled this question under a factual background remarkable analagous to this action.

Veek P 425:

> [1,2] The district court was persuaded that the mandatory language of Rule 4(c) could be circumvented by Veeck's syllogistic argument. We disagree. When personal service of original process is made pursuant to Rule 4(e), it must be made by a person specified by Rule 4(c). See 2 J.Moore, Federal Practice, ¶ 4.08, at 1009-1011 (2d ed. 1970); 4 Barron & Holtzoff, Federal Practice and Procedure, § 1092, at 353 (Wright ed. 1969); cf. United States for Use of Tanos v. St. Paul Mercury Ins. Co., 361 F.2d 838, 842-843 (C.A. 5, 1966) (dissenting opinion). Accordingly, since Howes was not a person specified by Rule 4(c), he lacked proper authority to serve the district court's summons upon the appellants.

The affidavit of service (Appendix E11) of Robert R. Andersen clearly shows that it was Mr Anderson and not the federal marshall that made the air mail service of summons and complaint. The "Application of Plaintiff For Issuance of Summons" (Appendix E1) clearly shows that Robert R. Anderson contemplated service under Rule 4 e rather than Rule 4 c as required. The Application is stark barren of any application for a special person to be specially approved by the court for the person to make service in lieu of the marshall as Rule 4c mandates.

Veek P 426 :

> [4] The district court's lack of in personam jurisdiction over the appellants renders void its default judgment against them. Pennoyer v. Neff, 95 U. S. 714, 726-728, 24 L.Ed. 565 (1877). Accordingly, the district court should have granted their motion to set aside that void judgment. Ruddies v. Auburn Spark Plug Co., 261 F.Supp. 648, 657 (S.D.N.Y., 1966); Fed.R.Civ.P. 55(c) and 60(b)(4).

Without question the factual and legal pattern of Veek, supra, fit this case and on strength of Veek alone this court is believed justified to reverse the action or judgment below and remand for further proceedings.

Surely since "Howes was not a person specified by Rule 4c, he lacked proper authority" so too Anderson was not a person specified by Rule 4c and he also lacked proper authority.

THE BLUNDER OF APPELLEE IN FOLLOWING THE STATE LAW IN SELECTION OF PERSON TO MAKE SERVICE RATHER THAN COMPLIANCE WITH THE MANDATORY FEDERAL RULE IS FATAL AND CANNOT BE CORRECTED AT THIS LATE DATE.

II. FRAUD USED BY APPELLEE IN CONCEALMENT OF JURISDICTIONAL BASIS BY USE OF EX-PARTE APPLICATION, EX-PARTE AFFIDAVIT AND EX-PARTE MEMORANDUM OF LAW IN CALIFORNIA FEDERAL COURT IN APPLICATION FOR ISSUANCE OF OUT OF STATE SUMMONS PRECLUDE APPLICABILITY OF RRINCIPLES OF RES JUDICATA TO ISSUES NOT LITIGATED IN CALIF.

A. U. S. SUPREME COURT DECISIONS REQUIRE A FULL & FAIR HEARING

The chain of events whereby the Appellees secured their Calif. federal judgment unquestionably involved fraud, deceit and surprise and denial of due process in concealment of jurisdictional basis in an ex parte application.

The uncontraverted facts are that in the California proceeding Plaintiff was denied a "meaningful" hearing with notice as defined by the UNITED STATES SUPREME COURT. Snaidach v Family Finance 395 U. S. 339

P 339: "The right to be heard has little meaning unless one is fully informed"

See also Schroder v City of N. Y. 371 U. S. 208

At P 211:

> We hold that the newspaper publications and posted notices in the circumstances of this case did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires.
>
> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken* v. *Meyer*, 311 U. S. 457; *Grannis* v. *Ordean*, 234 U. S. 385; *Priest* v. *Las Vegas*, 232 U. S. 604; *Roller* v. *Holly*, 176 U. S. 398."

In this action Attorney Anderson did not even bother to publish his notice in the newspapers (which was held below the minimum limits of due process) but gave no notice at all.

II. B. RES JUDICATA IS NOT APPLICABLE TO ISSUE OF PROPER SERVICE OF SUMMONS AS THIS ISSUE WAS NOT LITIGATED IN CALIFORNIA BEING CONCEALED BY FRAUD.

The principle of res judicata and exceptions thereto is treated in Moores Federal Practice Vol 1B Sec 0.407 & S 0.408 and other treatise on federal law.

Moores Vol 1b P 932 " A party may institute an action to enjoin a judgment .... on grounds it was entered into under conditions of denial of due process"

American Surety Co v Baldwin 287 US 156

The principle is that this Appellant can in the Connecticut District Court litigate the issue of lack of personal jurisdiction in the California federal court by reason of lack of service by federal marshall (FRCP Rule 4c) because such issue was never litigated in the California federal court (being concealed in ex parte application) is clearly brought out in case law cited in Moores.

Moores Vol 1B P 932:

At any rate the issue of fraud in a naturalization oath is not res judicata in a suit brought to set aside the naturalization decree. "For fraud in the oath was not in issue in the [naturalization] proceedings and neither was adjudicated nor could have been adjudicated." Knauer v. United States (1946) 328 US 654, 66 S Ct 1304, 90 L ed 1500 (¶60.37[1], *infra*).

For a broad interpretation of "extrinsic" fraud, see New York Life Ins. Co. v. Nashville Trust Co. (1956) 200 Tenn 513, 292 SW2d 749, noted in (1958) 71 Harv L Rev 559, (1956) 24 Tenn L Rev 1194, (1957) 10 Vand L Rev 868. A judgment against the insurer for the full proceeds of a life insurance policy was held vulnerable nearly twenty years after its rendition to attack in an equity suit for that purpose on the ground that the insured, who was in fact still alive, had "imposed upon and fooled and defrauded" the court by hiding out at the time of the trial. There were two dissents on the ground that the fraud was intrinsic, since the question whether the insured was dead or in hiding had been in issue in the earlier litigation.

II C . JEAN NEAL'S SAVAGE VIOLATIONS OF STATUTORY RULES IN THE CALIFORNIA FEDERAL COURT (CONCEALED FROM APPELLANT FOR TWO YEARS) DENIED APPELLANT DUE PROCESS AND PRECLUDES RES JUDICATA AS TO THESE ISSUES.

The California federal action was commenced by a one page complaint (Appendix H 1) totally barren of any jurisdictional basis and reading as a simple diversity action without reciting of a single long arm jurisdictional fact. Appellant defended in the California federal court on venue and personal jurisdiction without the slightest inkling or notice as to the 8 page application filed ex parte by Attorney Anderson yet at all times in the file before the California federal judge.

Nevertheless it is clear from a multiplicity of decisions in the Circuit Courts of Appeal that the federal rules have statutory affect. and must be followed or due process is denied. and the resulting judgment is invalid.

USA For the Use of Tanos v St Paul
5th C. A. 1966 361 F 2d 838
P 836

"the rules of federal civil proceedure have statutory effect"

See Moores Federal Practice 2nd 2d Vol 7 Ch 69 S 69.04

Rumsey v George E Failing Co.
10th C. A. 1964 333 F 2d 960

" FRCP have force and effect of statute"

Yet the proceedings conducted by Appellees in California reapeatedly and ruthlessly violated the statutory FRCP and denied Appellant due process.

1. FRCP Rule 4 c : Requires service of summons by U. S. Marshall or someone appointed by order of the court. Appellees violated this rule on their own initiative followed the state practice and used a person not appointed by the court.

2. FRCP Rule 4 c : Requires recording of judgment liens by U. S. Marshall. Appellees in their Answer (Record Documents 3 & 10) brazenly admit "self-help " in the recording of 14 illegal liens.

3. FRCP RULE 64 : Specifies that for supplemental proceedings....."(1) existing statutes of the U. S. govern..." Yet Appellees in Connecticut in filing 14 illicit liens violated Rule 64.

4. FRCP Rule 69: Requires supplemental proceedings to be by writ of execution unless the court orders otherwise. Yet without any order of the court Appellees via "self-help" filed judgment liens and now seek illegal foreclosure.

5. FRCP Rule 7 : Requires applications for orders to be in writing and a apart of the notice of hearing. Yet in the California federal court the Appellees filed "ex parte" their all important application and affidavit and brief for issuance of out of state summons and Appellant was kept "in the dark" for years as to the claimed jurisdictional basis.

6. FRCP Rule 8 : The complaint in the California federal action (Appendix H 1) is brazenly barren of the jurisdictional elements set forth in the ex parte application. Comparison of the motion for summary judgment shows allegations all out of the scope of the complaint. Truly a violation of Rule 8.

RULE 8

GENERAL RULES OF PLEADING

a. CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends,

7. FRCP Rule 5:

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

a. SERVICE: WHEN REQUIRED. Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties affected thereby,

Without a doubt the rules required Jean Neal applying in California to serve the application and affidavit as to jurisdictinal claims and also to include the same allegations and jurisdictional claims in the complaint so that Appellant would have DUE NOTICE and be FULLY INFORMED and be able to conduct a complete defense and to have a fair and complete hearing.

By fraud Jean Neal denied Appplant his fundamental rights and today res judicata is not appropriate to this defense raised for the first time in the Conn. District Court.

Judge Clairie's RULING of March 5th, 1974 erroniously follows as its bible Baldwin v Iowa Travelling Men's Asso. 263 U. S. 522. This case first reached in the U. S. Supreme court the issue of res judicata in federal courts. Yet that case and quotations on Page 11 of the Ruling (Appendix B11) are totally inapplicable to the facts of this action. The key words in Baldwin, supra, missed by Judge Clarie are on Page 526: "where one .... is fully heard...."

The Baldwin court distinguished two other cases factually where issues not litigated would and were separately litigated in follow on cases.

See Corpus Juris Secundum Vol 50 Sec 592 - 600

CJS Vol 50 P 13 : "the difference between the effect of a judgment as a bar to a second action on the same claim and its effect when the second action invokes a different claim is often overlooked, with the result that the law is sometimes misapplied." (underline added)

This is just what Appellant contends the lower court did in this action - misapply the principle of res judicata. Appellant contends he had no knowledge for two years (no constitutional notice or hearing) as to Appellees acts in California concerning the jurisdictional claims and as to many violations of the statutory rules and as a result these issues were not litigated in California and as a result these issues are alive and valid defenses to be litigated today in Connecticut. The District Court used a broad broom - so broad he swept good issues and bad issues into one dustpan.

Nelson v Swing A Way Mfg 266 F 2d 184
8th C. A. 1959

"the court must look to the pleadings and examine the record to determine the questions essential to the former decision"

In this action by comparison of the California complaint (Appendix H 1) and the California ex parte application (Appendix E1- E12) concealed from Appellant for two years this Court can plainly see the issues Appellant seeks to litigate in Conn., namely the denial of due process by violations of staturory federal rules and the lack of proper Rule 4c service by U. S. Marshall were matters Appellant in California litigation had no notice nor knowledge and these matters are now ripe for litigation in Connecticut.

III. THE DISTRICT COURT'S USE OF LITIGATION RANDOMLY CARRIED OUT OVER A DECADE WITH PERSONS OTHER THAN APPELLEE FOR ITS LITIGATION BASIS IS ERRONIOUS.

III. A. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT

The Appellant's activities in California, nonexistant for five years do not meet the minimum activities test of International Shoe Co v Washington 326 U. S. 310 (1945).

The Supreme Court in International Shoe, supra, established a flexible rule for determining jurisdiction.

> "It is evident that the criteria by which we mark the boundary line between those activities which justify this objection of a corporation to suit and those which do not cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents is another state, is a little more or a little less.....Whether due process is satisfied must depend rather upon the quality and the nature of the activity, in relation to the fair and orderly administration of the laws of which it was the purpose of the Due Process Clause to insure. That clause does not contemplate that a state may make a binding judgment in personam against an individual or corporate defendant with which the state has no contacts or relations."

It was noted by the Supreme Court in McGee v International Life Insurance Co, 355 U. S. 220, a trend of expanding jurisdiction over a non-resident. However in Hanson v Denckla, 357 U. S. 235, the High Court still recognized there were limits to this expansion:

> "But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on personal jurisdiction of a state court (cites). Those restrictions are more than a guaranty of immunity from inconvienience of distant litigation. They are a consequence of territorial limitation on the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contact"..... It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invo-

In this action Appellant's presence in Califonria, the alleged forum state, was last about five years, whereas the statute of limitations in California for torts, such as Appellees contend was committed in 1965 is two years. CCP 339 (1).

The very casualness of Appellant's exercise of fundamental first amendment freedoms to visit his minor children residing in California is attested to by Appellee in the affidavit (Appendix E4) lines 16-18.

> "Defendant visited California regularly from 1961 to 1969, up to several times a year."

APPELLANT SUBMITS SO OBVIOUSLY DO HIS ACTIVITIES FALL OUTSIDE THE SCOPE OF ACTIVITIES REQUIRED FOR JURSIDICTION BY DECISIONS OF THE UNITED STATES SUPREME COURT THAT THE ORDER BELOW SHOULD SUMMARILLY BE REVERSED AND THE COMPLAINT DISMISSED FOR LACK OF PERSONAL JURISDICTION.

"More contacts are required for the assumption of jurisdiction by the state than mere solicitation of sales" Green v Chicago, Burlington & Quincy Railroad Co 205 U. S. 530.

In this instant action Appellant solicited no sales, had no office nor residence in California, had no agents and conducted no business and clearly does not fall within the activities approved by the United States Supreme Court for the exercising of extraterritorial jurisdiction.

> "It has generally been recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporatinn's behalf are not enough to subject it to suit on causes of action unconnected with the activities there."
> St Clair v Cox 106 U. S. 350
> Old Wayne Life Assn v Mc Donough 204 U. S. 8, 21
> Prehe V Louisville Cement Co. 134 Fed 511

III B. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE CIRCUIT COURTS OF APPEAL

Attorney Anderson's Motion For Summary Judgment is barren of a single citation to support litigation as an "activity" basis. Attorney Anderson's Brief in opposition to Motions For New Trial and To vacate Judgment is barren of a single citation to support litigation as an "activity" basis.

The Court below in its RULING on Cross-Motions for Summary Judgment is barren of a single citation to support litigation as an activity basis. Yet Appellant's Brief in the court below in Support of Summary Judgment for Appellant listed many current cases never reversed that hold litigation is a fundamental federally protected right and cannot be a long arm "activity" basis under the federal constitution.

See leading cases 1. Titus v Superior Court 1972
100 Cal Rpt 477

In this action it was held that Mr Titus resi dent of Maasachussetts whose children resided in California was not subject to Calif long arm just because he wrote letters and litigated over his children..

2. United Mercantile Agencies v Jackson
173 SW 2d 881

3. Collar v Peninsular Gas Co
295 SW 2d 88

Collar, supra, was long the leading case exploring in light of International Shoe, supra, the jurisdictional contentions based on malicious prosectuion and on litigation and rejecting such claim with complaint dismissed and summons quashed and upheld by Missouri Supreme Court based on lack of appropriate activities.

THE 4th C. A. HAS EXPLORED AND REJECTED A MULTIPLICITY OF LITIGATIONS AS ACTIVITY BASIS 1966

Dragor Shipping Corp v Union Tank Car Co 361 F 43

P 44: "participation in litigation in courts of state does not constitute doing of business within state so as to subject litigant to in personam jurisdiction of courts in state"

P 45 " Dragor's sole contention on appeal is that the Arizona District Court's assumption of jurisdiction over the person of Dragor and thereby over the subject matter of this action deprived Dragor of due process, and is therefor unconstitutional"

This court is reminded of the Plainiff's contentions herein being identical to those ofDragor in Arizona.

The Dragor cases involved extended litigation in the courts of Arizona between the same parties. A stipulation was signed for settlement payment of $1,000,000 and the federal cases dismissed. Payment was not made. New suit was started based on prior litigation in Arizona. The 4th C. A. stated that the prior litigation was without constitutional significance lacking necessary constitutional connections. See McGee supra

Dragor P 48:

> [4, 5] In *McGee*, supra, no activity apart from or antecedent to the contract was relied upon by the court in holding that the contract sued upon was sufficiently connected with the forum state to satisfy the due process requirements. It would not be correct, however, to say that such activity will never be relevant in establishing the necessary minimum contact. A contract upon which suit is brought may bring into issue prior dealings between the parties in the forum state, and these dealings may well provide a basis for jurisdiction. But where the agreement sued upon is in the nature of a settlement of existing claims, and the only issues presented relate to its breach and not its validity, we think the antecedent dealings are without constitutional significance and do not provide the necessary substantial connection.

Dragor P 49:

> [6-9] The execution and delivery of the note took place in New York and so could not, in any event, have significance where the inquiry concerns activity in the forum state. The stipulations dismissing the Arizona suits were executed in New York but filed in Arizona. Such filing was long prior to September 30, 1964, when, Union asserts, Dragor committed the breaches sued upon. The filing of these dismissals constitutes an isolated inconsequential act having no legal significance in this law suit. It does not provide a substantial connection of the kind referred to in *McGee*.[12]

Attorney Anderson"s "broad brush" litigation claim covering many many years, over widely dispersed court systems with different parties and different issues mostly unknown to Jean Neal fits the Dragor case.....

> "It does not provide a substantial connection of the kind referred to in McGee"

III. C. THE DECISION BELOW CONFLICTS WITH RECENT KEY DECISIONS IN OTHER DISTRICT COURTS

See the March 25th, 1974 Federal Supplement Page 1366
Munchak Corp v Riko Enterprises Dec 21, 1973 USDC N. Carolina

Munchak, Supra rejected litigation as a permissible constitutional jurisdictional basis P 1366:

> "presence in a state solely to participate in litigation is not, by itself, sufficient connection with that state to make a person amenable to the state's jurisdiction"

The Munchak Plaintiff argued that the defendant "controlled" the litigation thus there was necessary "activity". See how this claim was rejected in North Carolina"
P 1369

> [2] Plaintiff contends that defendant controlled the defense of the earlier action brought in this Court by plaintiff against Cunningham, including the payment of costs. Although defendant denies that it "controlled" the litigation, there is no dispute as to the defendant's participation in that action on Cunningham's behalf. In either event, presence in a state solely to participate in litigation is not, by itself, sufficient connection with that state to make a person amenable to the state's jurisdiction. *See* Dragor Shipping Corp. v. Union Tank Car Company, 361 F.2d 42 (9th Cir. 1966).

Moreover, to so hold might conflict with traditional immunity principles designed to further the orderly administration of justice. *See generally* Vol. 4 Wright and Miller, Federal Practice and Procedure, Section 1076.

Anderson's claim that litigation in Califonria is an

activity violate the federal constitution, McGee, Supra, and all known state and federal cases. There is no rational relationship between Jean Neal's claimed state court judgment debt and random litigation over years apart and hundreds of miles apart in different court systems with different litigants and with different claims or issues all unknown to **Jean** Neal.

At P 1374 the Munchak supra case develops the stream of activity concept out of which a tort flows directly related to the stream of activity. This is not so in this case. The litigations were random and unrelated to Jean Neal's alleged debt.

Munchak P 1374: "True, the defendant engages in a widely dispersed entertainment activity. However, unlike the "stream of commerce" fact setting, the injuries alleged in this lawsuit did not result from this activity of the defendant. The agent of the harm was not the defective product"

"Nor can this case be brought within constitutional limitations when the unrelated activities of the defendant in this state are considered"

Jean Neal's alleged injuries did nct result from the varied and random litigation described inaccurately by Robert Anderson but instead consist of a money debt. Truely this record is barren of a single citation to support the contentions of Attorney Anderson.

While Munchak, supra, came from USDC- N. Carolina another more recent case within the 2nd C. A. somewhat factually analogous denied long arm jurisdiction in USDC - D New Jersey.

Gelimeau v N. Y. Univ Hospital
May 1, 1974 375 F Supp 661.

The Gelimeau action was dismissed for lack of personal jurisdiction of the defendant, NY Univ Hospital.

This dismissal was despite

1, The hospital had employees living in New Jersey

(Note Appellant had children living in Calif.)

2. The hospital had Docters liscened in New Jersy.
(note Appellant was never liscenced in N. J.)

3. Received patients from J. N. J.
(note Appellant never received patients from N. J.)

Gelimeau P 667: " Such a rule would have a chilling effect on availability of professional services to non-residents. Professionals in the medical field would be hesitent to treat non-residents.

So too in this action the ruling below would have a "chilling affect" on fathers in divorce actions who by necessity must litigate in distant states the rights of their minor children or see them damaged for life. These all important constitutional rights so clearly spoken by the USDC - D N. J. were totally ignored by the USDC - Conn.

IV. BOTH THE CALIFORNIA DISTRICT COURT AND THE CONN. DISTRICT COURT EXCEEDED THEIR JURISDICTIONAL LIMITS AND "LEGISLATED" IN ADOPTING APPELLEE'S "LITIGATION" ACTIVITY BASIS.

The UNITED STATES SUPREME COURT decisions make clear that the establishment or expansion of jurisdiction is limited to a legislative function and outside the scope of the District Courts.

As the U. S. Supreme Court said in Missouri Pac RR Co v Clarendon Boat Car Co, 257 U. S. 533 (1922) "provisions for making foreign corporations subject to service in the state is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process. note: underline added.

The 2nd C. A. emphasized that every circuit has made rulings limiting jurisdiction to within the legislative limits. Arrowsmith v.United Press International 320 Fed 219 (1963)

The Second Circuit stated: "This conclusion, that a federal district court will not assert jurisdiction over a foreign corporation in an ordinary diversity case unless that would be done by the state court under constitutionally valid state legislation in the state where the court sits, has been reached in almost every circuit that has considered the isse" See Bowman v Curt G. Joa Inc 361 F2d 706 4th C A 1966; Westcott-Alexander Inc v Dailey, 264 F2d 853 (4 C. A 1966)

The Fourth Circuit made this limitation crystal clear in 1968 Beaty v M. S. Steel Co 401 F 2d 157

P 161: "Thus, it is clear that at least where the legislature has acted, even though the statute may not go the limits of due process, the courts of a state may not go further and assert jurisdiction over persons not embraced within that legislation"

This Court sitting in Connecticut cannot "legislate" for the State of California. Its decisions must be limited by California legislature and if the statute is vague or uncertain then this court must declare the California long arm statute void and unconstitutional, offensive to due process. By no stretch of the imagination is this court empowered in light of the above to equate "litigation" in California, a federally protected right, with a "tort" to create for Attorney Anderson brand new jurisdictional basis in violation of the federal constitution.

V. BOTH CALIFORNIA AND CONNECTICUT STATUTES OF LIMITATIONS BAR THIS ACTION.

Although without a doubt the Appellees claim in both the California federal court and in Connecticut district court is for a "debt", namely an action on an alleged state judgment that Appellant contends was made in denial of due process and in violation of the statute for automatic mandatory disqualification of state judges (see Appendix G1 CCP 170 and CCP 170.6) nevertheless in all of the paper work filed in both the California federal court and the Connecticut District Court the Appellllees, contend a "tort" jurisdictional basis.

Nevertheless, the alleged tort from wh ch Appellees state court judgment flows in California took place in 1965and Appellees admit that from 1965 to 1969.....

> Appendix E-4 : Attorney Anderson's Affidavit
> "Defendant visited California regularly from 1961 to 1969, up to several times a year, often for weeks at a time."

Thus there was ample time to serve Appellant in California and the appropriate statutes of limtations of both Calif. and Connecticut tolled about 1967.

Conn G. S. 52-577 : "No action founded upon a tort shall be brought but within three years from the date of the act."

California CCP 339 (1): Time of Commencing actions: Two years An action upon... a liability not founded on an instrument in writing."

This court might be mindful of the fact that California adopted the long arm statutes CCP 410,10 and related sections effective July 1, 1970. Thus Appellees had an additional 15

months of service under the long arm . statute from July 1, 1970 to mid October 1971 when service was carried out plus the four years from 1965 to 1969 when Appellant was constantly in California to visit his children. Thus an actual six and one half years transpired (on a statute of limitations of two years) during which service could be made. Truly the Appellees follow an Alice-in-Wonderland lack of logic in making their belated long arm service.

VI. THE DECISION BELOW IS BASED ON AN INADEQUATE FACTUAL BACKGROUND AND ON HEARSAY AFFIDAVIT.

A. Attorney Anderson's Affidavit in Support of Summary Judgment Is Mostly Hearsay, Lacks Personal Knowledge and Is Inadmissible As Evidence.

In this action Robert R. Anderson, admitted an attorney in California and appearing pro see purports to file am motion for summary judgment under Rule 56 on behalf of all defendants. Yet the fatal defect in his affidavit is that it fails to show the type of personal knowledge and to demonstrate facts admissible as evidence thus violating Rule 56.

At best Anderson proclaims he was associated as Counsel since 1966 althogh he admits events go back to 1959 and manages to develop that he is an attorney with offices in California and a defendant in this action. He has no knowledge of the alleged tort basis that took place in 1965. From this limited basis, woefully inadequate under Rule 56, he goes on to rcite in his "affidavit ?" a series

of allegations most of which he gleaned from court files, or from the clerk of the court or from the U. S. mails. His allegations are the rankest hearsay and not admissible in any court of the land. At most he factually appeared to have seen this Appellant in California and that fact alone means nothing to the issues or merits of this action.

Prior courts have considered and rejected hearsay affidavits by counsel gleaned from their clients or from court files.

> "The concluding paragrpah of the affidavit discloses its source and its nature in the following words.
>
> > "the facts set out in this affidavit are taken from the records of the Vetrrans Adminsstration.... The file is available to the court for verification...."
>
> Necssaril, therefore the affidavit abounds in secondary statements gleaned from written material, hearsay and factual and legal conclusions. Thus this court holds it does not rise to the dignity of evidence and specifically that it fails to meet the rather stern tests of Rule 56 e."

Welcher v. U. S. 14 FRD at 239

The raw impropeiety of Andersons prepairing his own affidait on behalf of other defendants, obviously his clients, is treated in Welcher, supra.

The Court at P 238: "The writer of this memorandum is not disposed to encourage counsel in actions pending before this court to offer themselves as witnesses touching matters essential to the issues. That practice too easily proceeds toward the perversion of the attorney's role."

For a most recent case where theCalifornia Appellate Courts rejected use of a Hearsay Affidavit and quashed service of Defective summons see Sheard v Sup Court of Alameda 114 Cal Rpt 743 June 27, 1974

P 746: "the facts purported to be stated are hearsay and must be disregarded because they are made on information and belief." Franklin v Nat C, Goldstone Agency, 33 Cal 2d 628, 631 204 P 2d 36, Gutierrez v Sup Court 243 Cal App

Thus following the federal Welcher court or the California state Sheard court even if this litigant were "doing business" in California Anderson's hearsay affidavit must be disregarded and the California judgment declared void.

VII. THE FOURTEEN JUDGMENT LIENS ARE INVALID AS FRCP 4c, RULE 64, AND RULE 69 WERE VIOLATED BY RECORDING BY A PERSON OTHER THAN THE U. S. MARSHALL.

There is no doubt but that attorney Anderson himself caused the liens to be recorded by the Town Clerks of Hartford, Bristol and Torrington:

Answer Para 4: "Defendants admit that they prepared the nine judgment liens referred to in the cmmplaint and caused them to be recorded in September 1972 in the land records of the Towns of Bristol, Hartford and Torrington"

FRCP RULE 4 c/U. S A for the Use of Tanos v St Paul 361 F 2d 838

"The rules of federal civil procedure have statutory effect & Rule 64 provides that any existing staute of the U. S. governs"

Court of Appeals held that writ of garnishment should have been served by U. S. Marshall.

We conclude order quashing service proper."

In This action Andersons liens were improper.

Summary Judgment Should be Granted on the Complaint and First Amended Complaint in favor of Plaintiff.

10th C. A. Rumsey v Failing 333 F 2d 960 1964

Held service by mail must be made under FRCP and not under Kansas statute due to FRCP 69 applying.

P 962: We are of the opinion in supplementary proceedings FRCP with respect to the method of service and to the person who may make service control, rather than general provisions of state's practice and proceedure"

VIII. THE DISTRICT COURT ERRED IN DENIAL OF THE THIRD CAUSE OF ACTION TO CHALLENGE THE CONSTITUTIONALITY OF G. S. 49-44.

Appellant proposed 3rd cause of action to challenge on a number of grounds the validity of Conn G. S. 49-44, This was denied in the district court on Oct 2, 1972 on grounds:

"the latter allegations fail to state a claim upon which relief can be granted."

The jurisdictional basis upon which relief can be granted is well known today, namely Lynch v Household Finance 405 U. S. 538 and the follow-on Tucker v Maher, 405 U. S 1052. Both cases challenged on constituional grounds Conn. General STatutes. Both were dismissed. Both dismissals upheld in the 2nd C. A. Both actions reversed and remanded for three judge courts by the UNITED STATES SUPREME COURT.

So too the order by Judge Claire should be reversed and remanded for proceedings before a three-judge federal court as it is unquestioned today that the federal courts have jurisdiction over "property" rights as well as "personal" rights.

Under 28 USC 2281 an application for an order such as was requested in the proposed 3rd cause of action requires hearing by a three-judge district court. Florida Lime & Avocado Growers v Jacobson 80 S Ct 569.

Judge Claries sole jurisdiction was to decide if a substantial federal question existed not to decide that question. Idlewild Bon Voyage Liquor Corp v Rohm 370 U. S. 713.

Notwithstanding his jurisdictional limits Judge Clarie attempted to decide that federal question (without adequate briefing) and usurped the function of a three-judge federal court. See Ruling in Appendix P 7-9.

The grave error into which Judge Clarie has fallen into is to presume all judgment liens are valid and the alleged debtor has no rights nor defenses. This attitute or theory persist throughout all of the proceedings in this action and affects every part of this appeal. While this brief is not the place to fully develop all argument as to the unconstitutionality of G. S. 49-44 yet in order to see the error committed in the district court it is important here and now to review the principles of law.

This appellant is quick to point out many judgment liens are not contested but say 10% to 20% (such as this action) are subject to sound constitutional defenses such as:

1. void	2. fraud	3. statute of limitations
4. partial payment	5. satisfaction & accord	6. vacated on appeal
7. human error	8. bookeeping	9. etc...

To permit a self-professed creditor to appear silently "out of the dark" from out of state and to lien everything owned by the debtor without notice nor hearing and to immobilize all of the alleged debtor's business affairs just as Jean Neal has done in this action is a gross invasion of the equal rights amendments to the U. S. constitution and violates all recent leading cases some of which are:

Snaidach v Family Finance	395 U. S. 537
Lynch v Household Finance	405 U. S. 538
Fuentes v Shevlin	92 S. Ct 1983

A case where the UNITED STATES SUPREME COURT upheld the right of debtor to notice and hearing where liens were recorded on out of state judgments was Griffin v Griffin 327 U. S. 220, Feb 25, 1946.

The Griffin supra case involved (as this action) the validity and applicability of full faith & credit on a N.Y. state judgment for alimony where execution was commenced in the District of Columbie. The District Court upheld the lien (just as Judge Clarie). The court of appeal upheld the district) court (This Appellant requests this court of appeal to reverse!) The UNITED STATES SUPREME COURT reversed and remanded holding that due process was offended where Mr Griffin had his assets seized or executed on by reason of an out of state judgment when he contended he had valid defenses including that the out of state judgment was invalid due to denial of due process.

Griffin P 228:

> Because of the omission, and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony, there was a want of judicial due process, and hence want of that jurisdiction over the person of petitioner prerequisite to the rendition of a judgment *in personam* against him. *McDonald* v. *Mabee*, 243 U. S. 90; cf. *Webster* v. *Reid*, 11 How. 437, 459. The only indication in the record as to petitioner's residence at the time of the entry of the 1938 judgment is a recitation in the judgment itself that he was then a resident of the District of Columbia. But it is immaterial for present purposes whether or not petitioner was a domiciled resident of New York at the time, either within or temporarily without the State, or a resident of some other jurisdiction. It is plain in any case that a judgment *in personam* directing execution to issue against petitioner, and thus purporting to cut off all available defenses, could not be rendered on any theory of the State's power over him, without some form of notice by personal or substituted service. *Wuchter* v. *Pizzutti*, 276 U. S. 13, 18–20; Restatement of Conflict of Laws, § 75; and compare *Milliken* v. *Meyer*, 311 U. S. 457. Such notice cannot be dispensed with even in the case of judgments *in rem* with respect to property within the jurisdiction of the court rendering the judgment. *Roller* v. *Holly*, 176 U. S. 398, 409.
>
> A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. *National Exchange Bank* v. *Wiley*, 195 U. S. 257; *Old Wayne Life Assn.* v. *Mc-*

The Griffin, Supra, case is remarkably factually similar to this action where the Jean Neal liens were recorded with out notice or hearing and on an out of state judgment that Appellant claims is invalid due to lack of due process.

Judge Clarie is clearly wrong in not permitting the amendment to the complaint to challenge the constitutionality of G. S. 49-44 before a three-judge district court.

IX. THE DISTRICT COURT DENIED EQUAL PROTECTION OF THE LAWS AND DENIED DUE PROCESS BY DENIAL OF THE MOTION TO DISCHARGE EXCESSIVE LIENS.

That the 14 liens were excessive has never been disputed by the Appellees. Instead a stream of correspondence from California has been received with hints of Edgar Allen Poe madness threatening Appellant with.....

"..... a holocaust of foreclosures.....
and total ruin."

That the liens are willful and malicious there can be no doubt. The requirment for security is met and satisfied by one lien alone. The"Motion To Discharge Excessive Liens" was based on an affidavit showing increased value and an "Appraisal Under Oath" made and accepted and approved by the state Court of Common Pleas as recently as June 28, 1973. This showing was to the effect that one property alone had sufficient equity and the same showing satisfied the state court in 1973.

The statutory remedy available to this Appellant and available equallly to all citizens , namely Conn G. S. 49-50 and FRCP 69a , were properly invoked and under the equal protection clause of the 14th Amendment the Appellant had an equal right or greater right to use his property or so much of it as exceeded the lien for ordinary business reasons to re-finance, to sell, to pay bills and to simple survive in these enormously inflated times. See Record Document 26. But the District Court chose to deny the motion (Record Document 29) thus leaving this appellant exposed to the threats from California to induce "foreclosures, bankruptcy and total ruin." Such unlimited gratification of every malicious whim of Plaintiff to the total destruction of Defendant surely is not part of the federal constitution.

Connecticut G. S. 49-50: "Any person interested in any real estate covered by a judgment lien may bring a complaint, alleging that such lien covers more than sufficient property to reasonably secure such judgment; and the court may, upon such allegation being proven, discharge from such lien any of such real estate which is not needed for the reasonable security of the judgment debt..."

The power of the federal courts to apply G. S. 49-50 in this proceedings and to relieve this Appellant of gross injustices is in FRCP 69 (a) :

> "....the proceedings in aid of execution shall be in accordance with the practice and Procedure of the state in which the Distric Court is held..."

Surely due process requires that this Appellant be given the statutory protection of Rule 69 a and the applicable state statutes.

COMPARISON OF LONG ARM STATUES OF ALL THE STATES

****

X . APPELLEE'S PURPORTED JUDGMENT LACKS JURISDICTION WHEN COMPARED WITH ALL OF THE LONG ARM STATUTES OF ALL OF THE STATES

For the convienience and enlightenment of this Honorable Court Appellant has performed a tedious task, the research and tabulation of all of the states long arm statutes as they presently exist. Appellant believes and hopes the tabulation complete and accurate in all respects. This comparison was made and is presented to show that:

1. California alone among the 50 states has a "no holds barred" long arm statute totally devoid of any standards or rules or guide lines.
2. Comparison ofAppellee's factual jurisdictional situation with the nine states that have long arm statutes covering such situations (alleged out of state tort with alleged in state injury) shows that none of the states would grant jurisdiction to Appellee .

Study of the long arm statutes summarized or duplicated in the Appendix shows the 50 states can be classed in three classes as below:

A. No Long Arm Statute

1. ARIZONA
2. MONTANA
3. NEW HAMPSHIRE
4. NEW JERSEY
5. PENNSYLVANIA
6. UTAH
7. VERMONT
8. WEST VIRGINIA
9. COLORADO

B. Limited Long Arm Statutes

1. ALABAMA	auto accidents doing business
2. ALASKA	auto accidents
3. ARKANSAW	auto accidents commit s acts doing business
4. DELAWARE	doing business auto accident
5. FLORIDA	doing business auto accident operates water craft
6. GEORGIA	real property proceedings in rem
7. HAWAII	property
8. IOWA	commits torts
9. KANSAS	auto accidents
10. MICHIGAN	served in state domicile in state consents to service
11. NEVADA	auto accident products liability
12. NORTH CAROLINA	auto accident accepts service
13. NORTH DAKOTA	personal service doing business-serve agent
14. OHIO	auto accident
15. RHODE ISLAND	minimum contacts
16. SOUTH CAROLINA	auto accident
17. TEXAS	doing business/commit tort
18. WISCONSIN	auto accident

C. GENERALIZED LONG ARM STATUTES

1. CALIFORNIA	No Definition	
2. CONNECTICUT	Defined by Statute	
3. IDAHO	"	"
4. ILLINOIS	"	"
5. INDIANA	"	"
6. KENTUCKY	"	"
7. LOUISIANA	"	"
8. MAINE	"	"
9. MARYLAND	"	"
10. MASSACHUSETTS	"	"
11. MINNESOTA	"	"
12. MISSISSIPPI	"	"
13. MISSOURI	"	"
14. NEBRASKA	"	"
15. NEW MEXICO	"	"
16. NEW YORK	"	"
17. OKALAHOMA	"	"
18. OREGON	"	"
19. SOUTH DAKOTA	"	"
20. TENNESSE	"	"
21. VIRGINIA	"	"
22. WYOMING	"	"
23. WASHINGTON	"	"

While the above classifications or groupings are made for the convienience of this court close study shows the distinct facts:

1. California alone has no statutory definition
2. Two states expressly prohibit libel and slander, defamation of character, as these types of actions are frounded on and discouraged by state law. These two states are Connecticut and New York.
3. Of the 23 states in the third groups (C) above only nine have clauses applicable to the factu al situation of this action (out of state tort alleged with in state injuries). These states are:

1. Connecticut
2. Indiana
3. Louisiana
4. Kentucky
5. Maryland
6. Massachusetts
7. Minnesota
8. Nebraska
9. New York

X I.. .ALL OF THE NINE STATES WITH LONG ARM STATUTES COVERING ALLEGED OUT OF STATE TORTS CAUSING INJURY WITHIN THE STATE HAVE LIMITING LANGUAGE THAT PROHIBITS JURISDICTION UNDER THE FACTS OF THIS ACTION.

Examination of the appendix shows all of the nine states that would permit long arm jurisdiction for in state injuries caused by out of state acts or torts or acts partly in and partly out of state have similar limiting language. Typical of these is NEBRASKA S 25-536 reprinted below:

> 25-536. Jurisdiction over a person. (1) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:
> (a) Transacting any business in this state;
> (b) Contracting to supply services or things in this state;
> (c) Causing tortious injury by an act or omission in this state;
> (d) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;
> (e) Having an interest in, using, or possessing real property in this state; or
> (f) Contracting to insure any person, property, or risk located within this state at the time of contracting.
> (2) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

Thus to compare Appellee's claims against Appellant herein in light of above Appellant in light of Part (d) and Part (2) above would have to .....

.....regularly do or solicity business in California

.....or derive substantial revenue from California

.... only causes of action arising from acts described above may be asserted

Obviously Appellee's claim for jurisdiction would fall apart as the record most clearly and the Briefs on file most clearly show that Appellant did not come under these

limiting conditions but instead the Appellant.... visited his minor children,... wrote letters .... litigated wrongs. .... all of which are protected by the First Amendment and may not constitute a cause of action. None of Appellant's activities in California involved doing business, or soliciting business or deriving substantial revenue.....

THUS UNDER THE LIMITING LANGUAGE OF THE NINE STATES PERMITTING LONG ARM JURISDICTION UNDER SIMILAR FACTUAL SITUATIONS WOULD LACK JURISDICTION.

NONE OF THE STATES LONG ARM STATUTES PERMIT ONE DEBT "CONTACT" JURISDICTION SUCH AS APPELLEE NOW FALLS BACK ON.

In her last extremity Appellee falls upon the judgment debt as a jurisdictional basis. . A simple examination of the Appendix shows not one of the States permit such a basis. Appellee is below the minimum activity level standard set forth in INTERNATIONAL SHOE CO V WASHINGTON 326 U S 310 and the action and/or order below should be reversed and the complaint dismissed.

CONCLUSION

This Court is respectfully requested to reverse the decision below and to remand with instructions to permit amendment of the complaint to challenge the constitutionality of Connecticut G. S. 49-44 before a three-judge federal district court and to reconsider on equal protection principles the merits of Appellant's motion to discharge excessive liens.

Respectfully Submitted:

By_____

STANLEY V. TUCKER

APPELLANT

CERTIFICATE OF SERVICE BY MAIL

I, STANLEY V, TUCKER, hereby certify that on the 30 day of August 1974 I served the document annexed, APPELLANT's BRIEF, on the Appellees herein by mailing 2 true copy thereof postage prepaid air mail by depositing in the United States mails at Hartford Conn addressed as follows:

JEAN NEAL

621 E. Main St
Santa Paula, Calif

ROBERT R. ANDERSON
ANDERSON & ANDERSON
621 E. Main St
Santa Paula, Calif.

By_____
STANLEY V. TUCKER